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5 ATTORNEYS FOR AMERICA'S SERVICING COMPANY

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8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

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12 DONNIE KNAULS,  
13 Plaintiff,  
14  
15 v.  
16 WMC MORTGAGE,  
17 ASC/AMERICA'S SERVICING  
COMPANY MORTGAGE LENDERS  
NETWORK USA INC,  
COUNTRYWIDE HOME LOANS,  
18 Defendants.

19 ) Case No. 07CV2233-DMS (NLS)  
20 ) DEFENDANT WELLS FARGO BANK  
NA dba AMERICA'S SERVICING  
COMPANY'S REPLY RE NON  
OPPOSITION TO MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT PURSUANT TO FRCP  
12(b)(6) OR IN THE ALTERNATIVE  
MOTION FOR DEFINITE STATEMENT  
21 ) Judge: Hon. Dana M. Sabraw  
Date: May 23, 2008  
Time: 1:30 p.m.  
Room: 10  
22 )

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24 Defendant, AMERICA'S SERVICING COMPANY ("ASC") hereby submits the  
25 following Reply Brief in Support of It's Motion to Dismiss First Amended Complaint  
26 Pursuant to FRCP 12(b)(6) or in the Alternative Motion for Definite Statement.

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1     **I. TO DATE, NO OPPOSITION BRIEF HAS BEEN FILED TO ASC'S**  
 2     **MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO**  
 3     **FRCP 12(b)(6) OR IN THE ALTERNATIVE MOTION FOR DEFINITE**  
 4     **STATEMENT**

5           ASC's Motion to Dismiss First Amended Complaint Pursuant to FRCP 12(b)(6)  
 6       or in the Alternative Motion for Definite Statement ("Motion") was timely served on  
 7       April 8, 2008. Based on the hearing date of May 23, 2008, Plaintiff's opposition brief  
 8       was to be served on ASC's counsel no later than May 9, 2008. To date, this office has  
 9       not received any opposition brief from Mr. Knauls to the Motion.

10          If Mr. Knauls files an opposition brief to ASC's Motion prior to the hearing date,  
 11       it would be untimely, and would not allow sufficient time for ASC to properly prepare  
 12       for the hearing or to draft a reply brief. Therefore, if an opposition brief is filed with the  
 13       Court, it should not be considered by the Court in determining ASC's Motion because it  
 14       was untimely filed and/or not served on ASC.

15          As such, ASC's Motion to Dismiss First Amended Complaint Pursuant to FRCP  
 16       12(b)(6) or in the Alternative Motion for Definite Statement should be granted in its  
 17       entirety.

18  
 19       Dated: May 16, 2008

20           BARRY, GARDNER & KINCANNON  
 21           A Professional Corporation

22           By:



23           Laura J. Petrie, Esq.  
 24           Attorneys for Defendant,  
 25           WELLS FARGO BANK NA dba  
 26           AMERICA'S SERVICING COMPANY

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 28       H:\3651\0021\Pleading\non opp reply re motion to dismiss fac.wpd

## PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5000 Birch Street, Suite 420, Newport Beach, California, 92660.

On May 16, 2008, I served the foregoing document described as **DEFENDANT WELLS FARGO BANK NA dba AMERICA'S SERVICING COMPANY'S REPLY RE NON OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO FRCP 12(b)(6) OR IN THE ALTERNATIVE MOTION FOR DEFINITE STATEMENT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Donnie Knauls  
2360 Cypress Avenue  
Lemon Grove, CA 91945

Attorney for Defendant Countrywide Home Loans, Inc.  
Sanford Shatz, Esq.  
5220 Las Virgenes Road, MS: AC-11  
Calabasas, CA 91302

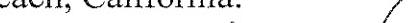
Attorneys for Defendant  
WMC Mortgage Corp.

Francis J. Cunningham III, Esq.  
David S. Bartelstone, Esq.  
Cunningham & Treadwell  
Warner Center Towers, Suite 840  
21800 Oxnard Street  
Woodland Hills, CA 91367-3640

[X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Newport Beach, California. I am readily familiar with the firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2008, at Newport Beach, California.

Port Beach, California.  
  
Christina Valenzuela